

FCC MAIL SECTION

Before the
Federal Communications Commission
APR 1 1993 Washington, D.C. 20554

DISPATCHED BY MM Docket No. 93-93

In re Applications of

COMMUNITY TV OF
SOUTHERN CALIFORNIA

BPET-881012KE

VALLEY PUBLIC
TELEVISION, INC.

BPET-900904KE

For Construction Permit
for a New TV Station on Channel *39
Bakersfield, California

HEARING DESIGNATION ORDER

Adopted: March 25, 1993;

Released: April 1, 1993

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications to construct a new noncommercial educational television station on Channel *39, Bakersfield, California; a "Petition to Deny, or in the alternative, to Dismiss"¹ filed against the application of Valley Public Television, Inc. (Valley) by Community TV of Southern California (Community)² a "Petition for Leave to Amend" filed by Valley;³ and other related pleadings.

2. The transmitter site proposed by Valley is 85.4 km from the reference point for Channel 25, Ridgecrest, California. Section 73.610 requires a minimum separation of 95.7 km. Therefore, Valley's site would be 10.3 km short-spaced. Valley has requested a waiver of the Rules. Accord-

ingly, an issue will be specified to determine whether circumstances exist which would warrant a waiver of Section 73.610. Since an applicant proposing a short-spaced site is required to make the threshold showing that no suitable fully spaced site is available, the Administrative Law Judge may in assessing those circumstances, consider the fact that the other applicant in this proceeding has specified a fully spaced site.

3. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field strength patterns, oriented so that corresponds to True North and tabulated at least every 10 plus any minima and maxima. Valley has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and copies to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau, within 30 days after this Order is released.

4. Except as indicated by the issues specified below the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.⁴

5. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Valley Public Television, Inc., if circumstances exist which would warrant a waiver of Section 73.610 of the Commission's Rules.
2. To determine, the extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants;
3. To determine, whether the factors in the record demonstrate that one applicant will provide a superior non-commercial educational broadcast service.

¹ Community's petition to deny is, in essence, a pre-designation petition to specify issues. Such petitions are no longer permitted; therefore, the petition will be dismissed. *Revised Procedures for Processing of Contested Broadcasting Applications*, 72 FCC 2d 202 (1979). Community attempts to raise an issue of acceptability by arguing that Valley has not requested a waiver of the "freeze" on the filing of new applications. However, we have already waived the freeze for Channel *39, Bakersfield, California, when we accepted Community's application for filing and invited competing applications. Valley's application is filed pursuant to that request. Thus, Valley need not seek another waiver.

² An informal objection was filed against Community's application on January 18, 1991 by the Committee on Media Integrity. That objection, however, has been disposed of by a separate action.

³ Valley filed petitions for leave to amend on November 14 and 22, 1991, July 8, 1992, and December 17, 1992, accompanied by amendments which updated its governing board, amended its by laws, and changed the nature of its organization to become

nonprofit, educational. The petitions will be granted and the amendments will be accepted for Section 1.65 purposes only, since these amendments were filed subsequent to the "B" cut-off date.

⁴ Neither applicant proposes to have a local studio in Bakersfield. Rather, the applicants each propose to operate essentially as satellites of other noncommercial educational stations it controls. The Commission has traditionally allowed educational broadcast systems to operate in the manner proposed. See *Nebraska Educational Television Commission*, 4 RR 2d 771 (1965). By so doing, the Commission recognizes the realities of public broadcasting funding and the ongoing problems of educational systems in finding the necessary funds to expand and provide noncommercial educational programming to all our citizens. Educational systems must necessarily find ways to get cost efficient programming to as many viewers as possible. Each applicant's proposal, in our judgment, is consistent with this concept. We find, therefore, that each applicant has demonstrated good cause for not locating a main studio in Bakersfield.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if either.

6. IT IS FURTHER ORDERED, That the petition to deny filed by Community TV of Southern California against Valley Public Television, Inc. IS GRANTED to the extent indicated herein and otherwise IS DISMISSED.

7. IT IS FURTHER ORDERED, That Valley Public Television, Inc.'s November 14, 1990, November 22, 1991, July 8, 1992 and December 17, 1992, petitions for leave to amend ARE GRANTED and the accompanying amendments ARE ACCEPTED, for Section 1.65 purposes only, and no comparative benefit will accrue to the applicant as a result of these amendments.

8. IT IS FURTHER ORDERED, That Valley Public Television, Inc. shall submit an amendment providing the information required by Section 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies each to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau, within 30 days after this Order is released.

9. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Video Services Division, Mass Media Bureau, Federal Communications Commission, Room 702, 1919 M Street, N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman, Chief
Video Services Division
Mass Media Bureau